U.S. Department of Homeland Security
Washington, DC 20229

U.S. Customs and Border Protection

HQ H302821

July 26, 2019

OT:RR:CTF:VS H302821 EE

CATEGORY: Valuation

Ralph Garcia
Volvo Car U.S. Operations Inc.
1801 Volvo Car Drive Building 300
Ridgeville, SC 29472

RE: Passenger Vehicles; Country of Origin Marking; Section 301 Measures

Dear Mr. Garcia:

This is in response to your correspondence, dated March 3, 2019, in which you request a ruling concerning the country of origin of a certain passenger vehicles imported into the United States from Sweden. Your request, submitted as an electronic ruling request on January 10, 2019, was forwarded to this office from the National Commodity Specialist Division for review. Our ruling is set forth below.

FACTS:

Volvo Cars, headquartered in Gothenburg, Sweden, has a number of dealers in the United States as well as a manufacturing plant in South Carolina. Passenger vehicles will be imported to the United States from Sweden after assembly in Sweden as part of a knockdown operation. You state that the passenger vehicles are classifiable under subheadings 8703.60 and 8703.80, Harmonized Tariff Schedule of the United States ("HTSUS"). You provided the following description of the knockdown operation. Components from various countries will be shipped to a factory in China where certain components will be assembled into subassemblies. Subassemblies along with other major components will then be shipped to Sweden for final vehicle assembly.

The following components will be assembled in China to produce a painted body assembly:

- Body sides, doors, rear shelf and tail gate originating in Italy
- Rear view mirrors originating in Great Britain
- Headlamps originating in Slovakia
- Side marker lights from France
- “A” panel, “C” panel, and panoramic roof manufactured in China

The following components will be assembled in China to make an engine module:

- Petrol engine and sub-frame originating in Sweden
- Gear box and front suspension originating in Japan
- Front brakes originating in the United States
- Radiator and steering system manufactured in China

The following components will be assembled in China to make a rear suspension module:

- Rear sub-frame and rear electric motors originating in Sweden
- Rear suspension originating in Japan
- Rear brakes originating in Germany

The following other major components will be shipped to Sweden where they will be incorporated into the vehicle final assembly:

- Hood originating in China
- Bumpers originating in China
- Battery modules originating in China
- On board charger and inverter originating in China
- Fuel tank and fuel filler pipe originating in China
- Exhaust system originating in China
- Hoses and fuel lines originating in China
- Under body panels and heat shields originating in China
- Instrument panel originating in China
- Tunnel console originating in China
- Seats originating in China
- High voltage cables originating in Europe (country not determined)
- Wheels originating in Europe (country not determined)

You provided an illustration of the knockdowned components. You state that the illustration does not represent the actual model but rather it illustrates the complexity of the operation. You state that at no time will the vehicles be assembled in China and broken down. The final vehicle assembly will take place in Sweden where you claim that the operation will result in a new and different article of commerce.

You state that the components and subassemblies may be shipped in two

methods: 1) all components necessary to build one vehicle shipped together in two containers as one shipment; or 2) sufficient components to build the number of vehicles in the production plan as separate shipments.

ISSUE:

What is the country of origin of the passenger vehicles imported from Sweden for purposes of marking and for purposes of application of the Section 301 measures for goods under subheadings 8703.60 and 8703.80, HTSUS?

LAW AND ANALYSIS:

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. § 1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit in such a manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of the article. The regulations implementing the requirements and exception to 19 U.S.C. § 1304 are set forth in Part 134, U.S. Customs and Border Protection Regulations (19 C.F.R. Part 134).

19 C.F.R. § 134.1(b) provides as follows:

> "Country of origin" means the country of manufacture, production, or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the "country of origin" within the meaning of this part...

Effective July 6, 2018, the Office of the United States Trade Representative ("USTR") imposed an additional tariff on certain products of China classified in the subheadings enumerated in Section XXII, Chapter 99, Subchapter III U.S. Note 20(b), HTSUS. *See* Notice of Action and Request for Public Comment Concerning Proposed Determination of Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation, 83 Fed. Reg. 28710 (June 20, 2018). Later, the USTR imposed additional tariffs on products classified under the subheadings enumerated in Section XXII, Chapter 99, Subchapter III U.S. Note 20(d), U.S. Note 20(f) and U.S. Note 20(g), HTSUS.[1] The corresponding products of China that are provided for in subheadings 9903.88.01, 9903.88.02, 9903.88.03, or 9903.88.04, HTSUS, and are classified in one of the subheadings enumerated in U.S. Note 20(b), U.S. Note 20(d), U.S. Note 20(f) or U.S. Note 20(g) to Subchapter III, shall continue to be subject to antidumping, countervailing, or other duties, fees and charges that apply to such products, as well as to those imposed by the aforementioned Chapter 99 subheadings.

[1] For additional information, please see the relevant Federal Register notices dated June 20, 2018 (83 F.R. 28710), August 16, 2018 (83 F.R. 40823), and September 21, 2018 (83 F.R. 47974).

Among the subheadings listed in U.S. Note 20(b) of Subchapter III, Chapter 99, HTSUS, are 8703.60.00 and 8703.80.00, HTSUS. When determining the country of origin for purposes of applying current trade remedies under Section 301, the substantial transformation analysis is applicable. The test for determining whether a substantial transformation has occurred is whether an article emerges from a process with a new name, character, or use, different from that possessed by the articles prior to processing. *See Texas Instruments Inc. v. United States*, 69 C.C.P.A. 151 (1982). This determination is based on the totality of the evidence. *See National Hand Tool Corp. v. United States*, 16 C.I.T. 308 (1992), *aff'd*, 989 F.2d 1201 (Fed. Cir. 1993).

In determining whether the combining of parts or materials constitutes a substantial transformation, the determinative issue is the extent of operations performed and whether the parts lose their identity and become an integral part of the new article. *Belcrest Linens v. United States*, 573 F. Supp. 1149 (Ct. Int'l Trade 1983), *aff'd*, 741 F.2d 1368 (Fed. Cir. 1984). Assembly operations that are minimal or simple, as opposed to complex or meaningful, will generally not result in a substantial transformation. *See* C.S.D. 80-111, C.S.D. 85-25, C.S.D. 89-110, C.S.D. 89-118, C.S.D. 90-51, and C.S.D. 90-97. If the manufacturing or combining process is a minor one which leaves the identity of the article intact, a substantial transformation has not occurred. *Uniroyal, Inc. v. United States*, 3 C.I.T. 220, 542 F. Supp. 1026 (1982), aff'd 702 F. 2d 1022 (Fed. Cir. 1983).

In order to determine whether a substantial transformation occurs when components of various origins are assembled into completed products, U.S. Customs and Border Protection ("CBP") considers the totality of the circumstances and makes such determinations on a case-by-case basis. The country of origin of the item's components, extent of the processing that occurs within a country, and whether such processing renders a product with a new name, character, and use are primary considerations in such cases. Additionally, factors such as the resources expended on product design and development, the extent and nature of post-assembly inspection and testing procedures, and worker skill required during the actual manufacturing process will be considered when determining whether a substantial transformation has occurred. No one factor is determinative.

In *Energizer Battery, Inc. v. United States*, 190 F. Supp. 3d 1308 (2016), the Court of International Trade ("CIT") interpreted the meaning of "substantial transformation." *Energizer* involved the determination of the country of origin of a flashlight, referred to as the Generation II flashlight. All of the components of the Generation II flashlight were of Chinese origin, except for a white LED and a hydrogen getter. The components were imported into the United States where they were assembled into the finished Generation II flashlight.

The court reviewed the "name, character and use" test utilized in determining whether a substantial transformation has occurred and noted, citing *Uniroyal, Inc. v. United States*, 3 C.I.T. at 226, 542 F. Supp. at 1031, *aff'd*, 702 F.2d 1022 (Fed. Cir.

1983), that when "the post-importation processing consists of assembly, courts have been reluctant to find a change in character, particularly when the imported articles do not undergo a physical change." *Energizer* at 1318. In addition, the court noted that "when the end-use was pre-determined at the time of importation, courts have generally not found a change in use." *Energizer* at 1319, citing as an example, *National Hand Tool Corp. v. United States*, 16 C.I.T. 308, 310, *aff'd,* 989 F.2d 1201 (Fed. Cir. 1993).

In reaching its decision in *Energizer*, the court expressed the question as one of whether the imported components retained their names after they were assembled into the finished Generation II flashlights. The court found "[t]he constitutive components of the Generation II flashlight do not lose their individual names as a result [of] the post-importation assembly." The court also found that the components had a pre-determined end-use as parts and components of a Generation II flashlight at the time of importation and did not undergo a change in use due to the post-importation assembly process. Finally, the court did not find the assembly process to be sufficiently complex as to constitute a substantial transformation. Thus, the court found that Energizer's imported components did not undergo a change in name, character, or use as a result of the post-importation assembly of the components into a finished Generation II flashlight. The court determined that China, the source of all but two components, was the correct country of origin of the finished Generation II flashlights under the government procurement provisions of the TAA.

In Headquarters Ruling Letter ("HQ") HQ H155115, dated May 24, 2011, CBP found that assembly in the United States of an imported glider, and other imported and U.S.-origin parts constituted a substantial transformation into the electrical vehicle, an article with a new name, character, and use. The electrical vehicle was composed of 31 components, of which 14 were of U.S.-origin. The assembly process in the United States was complex and time-consuming and involved a significant U.S. contribution in both parts and labor. Based upon these facts, CBP found that the country of origin of the electric vehicle was the United States. *See also* HQ H229157, dated November 16, 2012.

In HQ H118435, the U.S. was determined to be the country of origin for purposes of U.S. Government procurement for a line of electric golf and recreational vehicles. In that case, the chassis, plastic body parts, and various miscellaneous pieces of plastic trim were imported into the U.S. from China and assembled with U.S.-origin battery packs, motors, electronics, wiring assemblies, seats, and chargers. The vehicles were composed of approximately 53 to 62 components, of which between 12 and 17 were of U.S. origin. HQ H118435 held that none of the imported parts could function as an electric vehicle on their own and needed to be assembled with other necessary U.S. components. Additionally, it was held that given the complexity and duration of the U.S. manufacturing process, the operations were more than mere assembly. It was determined that a substantial transformation occurred, and further, the critical components to making an electric vehicle – battery pack, motor, electronics, wiring assemblies, and charger – were of U.S.-origin.

In HQ H022169, CBP found that an imported mini-truck glider was substantially transformed as a result of assembly operations performed in the U.S. to produce an electric mini-truck. The decision was based on the fact that, under the described assembly process, the imported glider lost its individual identity and became an integral part of a new article possessing a new name, character, and use. In addition, a substantial number of the components added to the imported glider were of U.S. origin. The glider was assembled with approximately 87 different components, 68 of which were of U.S. origin. The batteries, charger, and gear box were of U.S. origin, and other major parts, including the electric motor and brakes, were of foreign origin.

In the instant case, five subassemblies are manufactured in China from components from various countries. The five subassemblies and other components from China with the exception of high voltage cables and wheels from Europe will then be assembled into the passenger vehicles in Sweden. Unlike the situation in HQ H155115, HQ H118435, and HQ H022169, in this case, the complex assembly process occurs when producing the subassemblies in China. With respect to the final assembly, we find the manufacturing processes of the five subassemblies in Sweden do not rise to the level of complex processes necessary for a substantial transformation to occur. Further, the five subassemblies from China have a pre-determined end-use and do not undergo a change in use due to the assembly process in Sweden. Accordingly, we find that based on the information provided, the subassemblies and the foreign parts that are imported to Sweden are not substantially transformed as a result of the assembly operations performed in Sweden.

HOLDING:

The country of origin of the passenger vehicles for purposes of marking and for purposes of the application of subheading 9903.88.01, HTSUS, is China.

Sincerely,

Monika R. Brenner, Chief
Valuation and Special Programs Branch